

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MATTHEW JOHN MATAGRANO,

Plaintiff,

v.

9:05-CV-1459
(DNH)(RFT)

REGINA MILES, MD.; ROBERT CARR; ANN ANDZEL;
MS. CHRISTINE; ANTHONY DEVITO; JOHN DINARDO,
PATRICK; CINDY LAW,

Defendants.

APPEARANCES:

MATTHEW JOHN MATAGRANO
Plaintiff, *pro se*
183762
Central New York Psychiatric Center
P.O. Box 300
Marcy, New York 13403

RANDOLPH F. TREECE, MAGISTRATE JUDGE

ORDER

Presently before the Court is a Motion from *pro se* Plaintiff Matthew Matagrano seeking leave to file an Amended Complaint. Dkt. No. 13.¹ By his proposed Amended Complaint, Plaintiff seeks to name four additional Defendants and to assert claims against these individuals arising out of the conditions of his confinement at Central New York Psychiatric Center.²

The amendment of pleadings is governed by Rule 15(a) of the Federal Rules of Civil

¹ Shortly after this action was commenced, Plaintiff filed a "Supplemental Complaint." Dkt. No. 4. Prior to service of that pleading, Plaintiff filed a Motion to Supplement (Dkt. No. 9), which he subsequently withdrew (Dkt. No. 16), and then filed an Amended Complaint (Dkt. No. 11). Plaintiff thereafter filed the Motion to Amend which is before this Court. See Dkt. No. 13. In light of these filings, service has not yet been effected on Defendants.

² Plaintiff states that he suffers from a bilateral hearing impairment and a psychiatric disorder. Plaintiff claims, *inter alia*, that he has been denied reasonable accommodation for his hearing impairment in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*, and that Defendants have denied him proper care for his serious medical and mental health conditions during his confinement at CNY Psychiatric Center.

Procedure, which states that leave to amend shall be freely given “when justice so requires.”

FED. R. CIV. P. 15(a); *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Manson v. Stacescu*, 11 F.3d 1127, 1133 (2d Cir. 1993). The Supreme Court has stated:

In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc. -- the leave sought should . . . be “freely given.”

Foman v. Davis, 371 U.S. at 182.

In the case of proposed amendments where new defendants are to be added, the Court must also look to Rule 21. *United States v. Chilstead Building Co.*, No. 96-CV-0641 (N.D.N.Y. Nov. 7, 1997) (McAvoy, C.J.) (citations omitted). Rule 21 states that a party may be added to an action “at any stage of the action and on such terms as are just.” *Id.* Addition of parties under Rule 21 is guided by the same liberal standard as a motion to amend under Rule 15. *Chilstead; Fair Housing Devel. Fund Corp. v. Burke*, 55 F.R.D. 414, 419 (E.D.N.Y. 1972).

Based upon the Court’s review of the file, and in light of the fact that service of process has not yet been effected on the Defendants, Plaintiff’s Motion to Amend (Dkt. No. 13) is **granted**. The Clerk is directed to file the proposed Amended Complaint submitted in support of the motion as the Amended Complaint in this action and to revise the docket to identify all of the individuals named in that amended pleading as Defendants in this action. The Clerk shall issue Summonses and forward them to the United States Marshal for service on the Defendants.³

Upon service of the Amended Complaint, Defendants shall file a response thereto in accordance with the Federal Rules of Civil Procedure.

WHEREFORE, it is hereby

³ Plaintiff’s *In Forma Pauperis* Application was granted by prior Order of this Court. Dkt. No. 7.

ORDERED, that Plaintiff's Motion to Amend (Dkt. No. 13) is **granted**. The Clerk is directed to file the proposed Amended Complaint submitted in support of that Motion as the Amended Complaint herein and to revise the docket to reflect that the individuals identified in Plaintiff's Amended Complaint are Defendants in this action; and it is further

ORDERED, that Plaintiff provide the Clerk with copies of his Amended Complaint and completed USM-285 forms for service on the Defendants; and it is further

ORDERED, that the Clerk issue Summonses for all of the Defendants and forward them, along with copies of the Amended Complaint, to the United States Marshal for service. The Clerk shall forward a copy of the Summons and Amended Complaint to the Office of the New York State Attorney General, together with a copy of this Order; and it is further

ORDERED, that a response to the Amended Complaint be filed by Defendants or their counsel as provided for in Rule 12 of the Federal Rules of Civil Procedure; and it is further

ORDERED, that the Clerk of the Court serve a copy of this Order on Plaintiff.

IT IS SO ORDERED.

Date: September 5, 2006
Albany, New York



RANDOLPH F. TREECE
United States Magistrate Judge